

Office of the Secretary of Defense

§ 105.5

the Restricted Report be retained for 50 years.

(q) Any threat to the life or safety of a Military Service member shall be immediately reported to command and DoD law enforcement authorities (see §105.3) and a request to transfer the victim under these circumstances will be handled in accordance with established Service regulations. DoD recognizes that circumstances may also exist that warrant the transfer of a Service member who makes an Unrestricted Report of sexual assault but may not otherwise meet established criteria for effecting the immediate transfer of Service members. Those Service members may request a transfer pursuant to the procedures in this part.

(r) Service members who file an Unrestricted Report of sexual assault shall be informed by the SARC at the time of making the report, or as soon as practicable, of the option to request a temporary or permanent expedited transfer from their assigned command or installation, or to a different location within their assigned command or installation, in accordance with the procedures for commanders in §105.9 of this part.

(s) Service members who file Unrestricted and Restricted Reports of sexual assault shall be protected from reprisal, or threat of reprisal, for filing a report.

§ 105.5 Responsibilities.

(a) *USD(P&R)*. The USD(P&R), in accordance with the authority in DoDD 5124.02 and 32 CFR part 103, shall:

(1) Oversee the DoD SAPRO (see 32 CFR 103.3) in accordance with 32 CFR part 103.

(2) Direct DoD Component implementation of this part in compliance with 32 CFR part 103.

(3) Direct that Director, SAPRO, be informed of and consulted on any changes in DoD policy or the UCMJ relating to sexual assault.

(4) With the Director, SAPRO, update the Deputy Secretary of Defense on SAPR policies and programs on a semi-annual schedule.

(5) Direct the creation, implementation, and maintenance of DSAID.

(6) Oversee DoD SAPRO in developing DoD requirements for SAPR education, training, and awareness for DoD personnel consistent with this part.

(7) Appoint a general or flag officer (G/FO) or Senior Executive Service (SES) equivalent in the DoD as the Director, SAPRO.

(8) In addition to the Director, SAPRO, assign a military officer from each of the Military Services in the grade of O-4 or above to SAPRO for a minimum tour length of at least 18 months. Of these four officers assigned to the SAPRO, at least one officer shall be in the grade of O-6 or above. See Public Law 112-81.

(9) Establish a DoD-wide certification program (see §105.3) with a national accreditor to ensure all sexual assault victims are offered the assistance of a SARC or SAPR VA who has obtained this certification.

(b) *Director, Department of Defense Human Resource Activity (DoDHRA)*. The Director, DoDHRA, under the authority, direction, and control of the USD(P&R), shall provide operational support, budget, and allocate funds and other resources for the DoD SAPRO as outlined in 32 CFR part 103.

(c) *Assistant Secretary of Defense for Health Affairs (ASD(HA))*. The ASD(HA), under the authority, direction, and control of the USD(P&R), shall:

(1) Establish DoD sexual assault healthcare policies, clinical practice guidelines, related procedures, and standards governing the DoD healthcare programs for victims of sexual assault.

(2) Oversee the requirements and procedures in §105.11 of this part.

(3) Establish guidance to:

(i) Give priority to sexual assault patients at MTFs as emergency cases.

(ii) Require standardized, timely, accessible, and comprehensive medical care at MTFs for eligible persons who are sexually assaulted.

(iii) Require that medical care is consistent with established community standards for the healthcare of sexual assault victims and the collection of forensic evidence from victims, in accordance with the U.S. Department of

§ 105.5

32 CFR Ch. I (7–1–15 Edition)

Justice Protocol, instructions for victim and suspect exams found in the SAFE Kit, and DD Form 2911.

(A) Minimum standards of healthcare intervention that correspond to clinical standards set in the community shall include those established in the U.S. Department of Justice Protocol. However, clinical guidance shall not be solely limited to this resource.

(B) Healthcare providers providing care to sexual assault victims in theaters of operation are required to have access to the current version of the U.S. Department of Justice Protocol.

(iv) Include deliberate planning to strategically position healthcare providers skilled in SAFE at predetermined echelons of care, for personnel with the responsibility of assigning medical assets.

(4) Establish guidance for medical personnel that requires a SARC or SAPR VA to be called in for every incident of sexual assault for which treatment is sought at the MTFs, regardless of the reporting option.

(5) Establish guidance in drafting memorandums of understanding (MOUs) or memorandums of agreement (MOAs) with local civilian medical facilities to provide DoD-reimbursable healthcare (to include psychological care) and forensic examinations for Service members and TRICARE eligible sexual assault victims. As part of the MOU or MOA, Victims shall be asked whether they would like the SARC to be notified and, if notified, a SARC or SAPR VA shall respond. Local private or public sector providers shall have processes and procedures in place to assess that local community standards meet or exceed the recommendations for conducting forensic exams of adult sexual assault victims set forth in the U.S. Department of Justice Protocol as a condition of the MOUs or MOAs.

(6) Establish guidelines and procedures for the Surgeon Generals of the Military Departments to require that an adequate supply of resources, to include personnel, supplies, and SAFE Kits, is maintained in all locations where SAFE exams may be conducted by DoD, including deployed locations. Maintaining an adequate supply of SAFE Kits is a shared responsibility of

the ASD(HA) and Secretaries of the Military Departments.

(7) Establish minimum standards of initial and refresher SAPR training required for all personnel assigned to MTFs. Specialized responder training is required for personnel providing direct care to victims of sexual assault. Minimum standards shall include trauma-informed care (see §105.3) and medical and mental health care that is gender-responsive, culturally-competent, and recovery-oriented.

(d) *General Counsel of the DoD (GC, DoD)*. The GC, DoD, shall:

(1) Provide legal advice and assistance on proposed policies, DoD issuances, proposed exceptions to policy, and review of all legislative proposals affecting mission and responsibilities of the SAPRO.

(2) Inform the USD(P&R) of any sexual assault related changes to the UCMJ.

(e) *IG DoD*. The IG DoD shall:

(1) Establish guidance and provide oversight for the investigations of sexual assault in the DoD to meet the SAPR policy and training requirements of this part.

(2) Inform the USD(P&R) of any changes relating to sexual assault investigation policy or guidance.

(3) DoD IG shall collaborate with SAPRO in the development of investigative policy in support of sexual assault prevention and response.

(f) *Secretaries of the military departments*. The Secretaries of the Military Departments shall:

(1) Establish SAPR policy and procedures to implement this part.

(2) Coordinate all Military Service SAPR policy changes (Department of the Navy-level for the Navy and Marine Corps) with the USD(P&R).

(3) Establish and publicize policies and procedures regarding the availability of a SARC.

(i) Require that sexual assault victims receive appropriate and responsive care and that the SARC serves as the single point of contact for coordinating care for victims.

(ii) Direct that the SARC or a SAPR VA be immediately called in every incident of sexual assault on a military installation. There will be situations where a sexual assault victim receives

medical care and a SAFE outside of a military installation through a MOU or MOA with a local private or public sector entity. In these cases, the MOU or MOA will require that victims shall be asked whether they would like the SARC to be notified as part of the MOU or MOA, and, if yes, a SARC or VA shall be notified and shall respond.

(iii) When a victim has a temporary change of station or PCS or is deployed, direct that SARCs immediately request victim consent in writing to transfer case management documents, which should be documented on the DD Form 2910. Upon receipt of victim consent, SARCs shall expeditiously transfer case management documents to ensure continuity of care and SAPR services. All Federal, DoD, and Service privacy regulations must be strictly adhered to. However, when the SARC has a temporary change of station or PCS or is deployed, no victim consent is required to transfer the case to the next SARC. Every effort must be made to inform the victim of the case transfer. If the SARC has already closed the case and terminated victim contact, no other action is needed.

(iv) Upon the full implementation of the DoD Sexual Assault Advocate Certification Program (D-SAACP), sexual assault victims shall be offered the assistance of a SARC and/or SAPR VA who has been credentialed by the D-SAACP and has passed a National Agency Check (NAC) background check.

(v) Issue guidance to ensure that equivalent standards are met for SAPR where SARCs are not installation-based but instead work within operational and/or deployable organizations.

(4) Establish guidance to meet the SAPR training requirements for legal, MCIO, DoD law enforcement, responders and other Service members in §105.14 of this part.

(5) Upon request, submit a copy of SAPR training programs or SAPR training elements to USD(P&R) through SAPRO for evaluation of consistency and compliance with DoD SAPR training standards in this part. The Military Departments will correct USD(P&R) identified DoD SAPR policy and training standards discrepancies.

(6) Establish and publicize policies and procedures for reporting a sexual assault.

(i) Require first responders (see §105.3) to be identified upon their assignment and trained, and require that their response times be continually monitored by their commanders to ensure timely response to reports of sexual assault.

(ii) Ensure established response time is based on local conditions but will reflect that sexual assault victims shall be treated as emergency cases. (See §105.14 of this part for training requirements.)

(7) Establish policy that ensures commanders are accountable for implementing and executing the SAPR program at their installations consistent with this part, 32 CFR part 103, and their Service regulations.

(8) Establish standards and periodic training for healthcare personnel and healthcare providers regarding the Unrestricted and Restricted Reporting options of sexual assault in accordance with §105.14 of this part. Enforce eligibility standards of licensed healthcare providers to perform SAFEs.

(9) Establish guidance to direct that all Unrestricted Reports of violations (to include attempts) of sexual assault and non-consensual sodomy, as defined in title 10, U.S.C., against adults are immediately reported to the MCIO, regardless of the severity of the potential punishment authorized by the UCMJ.

(i) Commander(s) of the Service member(s) who is a subject of a sexual assault allegation shall provide in writing all disposition data, to include any administrative or judicial action taken, stemming from the sexual assault investigation to the MCIO.

(ii) Once the investigation is completed, MCIOs shall submit case disposition data that satisfies the reporting requirements for DSAID identified in §105.15 and the annual reporting requirements in §105.16 of this part. MCIOs shall submit case disposition data even when the sexual assault case is referred to other DoD law enforcement.

(iii) A unit commander who receives an Unrestricted Report of an incident of sexual assault shall immediately refer the matter to the appropriate

§ 105.5

32 CFR Ch. I (7–1–15 Edition)

MCIO. A unit commander shall not conduct internal command directed investigations on sexual assault (*i.e.*, no referrals to appointed command investigators or inquiry officers) or delay immediately contacting the MCIOs while attempting to assess the credibility of the report.

(10) Establish SAPR policy that encourages commanders to be responsive to a victim's desire to discuss his or her case with the installation commander tasked by the Military Service with oversight responsibility for the SAPR program in accordance with 32 CFR part 103.

(11) Establish standards for command assessment of organizational SAPR climate, including periodic follow-up assessments. Adhere to USD(P&R) SAPR guidance and effectiveness of SAPR training, awareness, prevention, and response policies and programs.

(12) As a shared responsibility with ASD(HA), direct installation commanders to maintain an adequate supply of SAFE Kits in all locations where SAFE's are conducted, including deployed locations. Direct that Military Service SAPR personnel, to include medical personnel, are appropriately trained on protocols for the use of the SAFE Kit and comply with prescribed chain of custody procedures described in their Military Service-specific MCIO procedures.

(13) Establish procedures that require, upon seeking assistance from a SARC, SAPR VA, MCIO, the VWAP, or trial counsel, that each Service member who reports that she or he has been a victim of a sexual assault be informed of and given the opportunity to:

(i) Consult with legal assistance counsel, and in cases where the victim may have been involved in collateral misconduct (see §105.3), to consult with defense counsel.

(A) When the alleged perpetrator is the commander or in the victim's chain of command, inform such victims shall be informed of the opportunity to go outside the chain of command to report the offense to other commanding officers (CO) or an Inspector General. Victims shall be informed that they can also seek assistance from the DoD Safe Helpline (see §105.3).

(B) The victim shall be informed that legal assistance is optional and may be declined, in whole or in part, at any time.

(C) Commanders shall require that information and services concerning the investigation and prosecution be provided to victims in accordance with VWAP procedures in DoDI 1030.2.⁴

(ii) Have a SARC or SAPR VA present when law enforcement or defense counsel interviews the victim.

(14) Establish procedures to ensure that in the case of a general or special court-martial involving a sexual assault as defined in 32 CFR part 103, a copy of the prepared record of the proceedings of the court-martial (not to include sealed materials, unless otherwise approved by the presiding military judge or appellate court) shall be given to the victim of the offense if the victim testified during the proceedings. The record of the proceedings (prepared in accordance with Service regulations) shall be provided without charge and as soon as the record is authenticated. The victim shall be notified of the opportunity to receive the record of the proceedings in accordance with Public Law 112–81.

(15) The commanders shall also require that a completed DD Form 2701, "Initial Information for Victims and Witnesses of Crime," be distributed to the victim by DoD law enforcement agents. (DD Form 2701 may be obtained via the Internet at <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2701.pdf>.)

(16) Establish procedures to require commanders to protect the SARC and SAPR VA from coercion, retaliation, and reprisals, related to the execution of their duties and responsibilities.

(17) Establish procedures to protect victims of sexual assault from coercion, retaliation, and reprisal in accordance with DoDD 7050.06.⁵

(18) Establish Military Service-specific guidance to ensure collateral misconduct is addressed in a manner that is consistent and appropriate to the

⁴ Available: <http://www.dtic.mil/whs/directives/corres/pdf/103002p.pdf>.

⁵ Available: <http://www.dodig.mil/HOTLINE/Documents/DODInstructions/DOD%20Directive%207050.06.pdf>.

Office of the Secretary of Defense

§ 105.5

circumstances, and at a time that encourages continued victim cooperation.

(19) Establish expedited transfer procedures of victims of sexual assault in accordance with §§ 105.4(r) and 105.9 of this part.

(20) Appoint a representative to the SAPR IPT in accordance with § 105.7 of this part, and provide chairs or co-chairs for WIPTs, when requested. Appoint a representative to SAPRO oversight teams upon request.

(21) Provide quarterly and annual reports of sexual assault involving Service members to Director, SAPRO, to be consolidated into the annual Secretary of Defense report to Congress in accordance with 32 CFR part 103 and sections 113 and 4331 of title 10, U.S.C. (See § 105.16 of this part for additional information about reporting requirements.)

(22) Provide budget program and obligation data, as requested by the DoD SAPRO.

(23) Require that reports of sexual assault be entered into DSAID through interface with a Military Service data system or by direct data entry by SARCs.

(i) Data systems that interface with DSAID shall be modified and maintained to accurately provide information to DSAID.

(ii) Only SARCs who have, at a minimum, a favorable NAC shall be permitted access to enter sexual assault reports into DSAID.

(24) Provide Director, SAPRO, a written description of any sexual assault related research projects contemporaneous with commencing the actual research. When requested, provide periodic updates on results and insights. Upon conclusion of such research, a summary of the findings will be provided to DoD SAPRO as soon as practicable.

(25) Establish procedures for supporting the DoD Safe Helpline in accordance with each Military Service-specific MOU or MOA between SAPRO and the Military Departments, to include but not limited to, providing and updating SARC contact information for the referral DoD Safe Helpline database, providing timely response to victim feedback, and publicizing the DoD Safe Helpline to SARCs and Service members.

(i) Utilize the DoD Safe Helpline as the sole DoD hotline to provide crisis intervention, facilitate victim reporting through connection to the nearest SARC, and other resources as warranted.

(ii) The DoD Safe Helpline does not replace local base and installation SARC or SAPR VA contact information.

(26) Establish procedures to implement SAPR training in accordance with § 105.14 of this part, to include both prevention and response.

(27) Require that reports of sexual assaults are provided to the Commanders of the Combatant Commands for their respective area of responsibility on a quarterly basis, or as requested.

(28) For CMGs:

(i) Require the installation commander or the deputy installation commander chair the multi-disciplinary CMG (see § 105.13 of this part) on a monthly basis to review individual cases of Unrestricted Reporting of sexual assault, facilitate monthly victim updates, direct system coordination, accountability, and victim access to quality services. This responsibility may not be delegated.

(ii) Require that the installation SARC (in the case of multiple SARCs on an installation, then the Lead SARC) serve as the co-chair of the CMG. This responsibility may not be delegated.

(iii) If the installation is a joint base or if the installation has tenant commands, the commander of the tenant organization and their designated Lead SARC shall be invited to the CMG meetings. The commander of the tenant organization shall provide appropriate information to the host commander, to enable the host commander to provide the necessary supporting services.

(iv) The Secretaries of the Military Departments shall issue guidance to ensure that equivalent standards are met for case oversight by CMGs in situations where SARCs are not installation-based but instead work within operational and/or deployable organizations.

§ 105.6

(29) Establish document retention procedures for Unrestricted and Restricted Reports of sexual assault in accordance with § 105.4(p) of this part.

(30) When drafting MOUs or MOAs with local civilian medical facilities to provide DoD-reimbursable healthcare (to include psychological care) and forensic examinations for Service members and TRICARE eligible sexual assault victims, require commanders to include the following provisions:

(i) Ask the victim whether he or she would like the SARC to be notified, and if yes, a SARC or SAPR VA shall respond.

(ii) Local private or public sector providers shall have processes and procedures in place to assess that local community standards meet or exceed those set forth in the U.S. Department of Justice Protocol as a condition of the MOUs or MOAs.

(31) Comply with collective bargaining obligations, if applicable.

(32) Provide SAPR training and education for civilian employees of the military departments in accordance with Section 585 of Public Law 112-81.

(g) *Chief, NGB.* The Chief, NGB, shall on behalf of the Secretaries of the Army and Air Force, and in coordination with DoD SAPRO and the State Adjutants General, establish and implement SAPR policy and procedures for NG members on duty pursuant to title 32, U.S.C.

(h) *Chairman of the Joint Chiefs of Staff.* The Chairman of the Joint Chiefs of Staff shall monitor implementation of this part and 32 CFR part 103.

(i) *Commanders of the Combatant Commands.* The Commanders of the Combatant Commands, through the Chairman of the Joint Chiefs of Staff and in coordination with the other Heads of the DoD Components, shall:

(1) Require that a SAPR capability provided by the Executive Agent (see § 105.3) is incorporated into operational planning guidance in accordance with 32 CFR part 103 and this part.

(2) Require the establishment of an MOU, MOA, or equivalent support agreement with the Executive Agent in accordance with 32 CFR part 103 and this part and requires at a minimum:

(i) Coordinated efforts and resources, regardless of the location of the sexual

32 CFR Ch. I (7-1-15 Edition)

assault, to direct optimal and safe administration of Unrestricted and Restricted Reporting options with appropriate protection, medical care, counseling, and advocacy.

(A) Ensure a 24 hour per day, 7 day per week response capability. Require first responders to respond in a timely manner.

(B) Response times shall be based on local conditions; however, sexual assault victims shall be treated as emergency cases.

(ii) Notice to SARC of every incident of sexual assault on the military installation, so that a SARC or SAPR VA can respond and offer the victim SAPR services. In situations where a sexual assault victim receives medical care and a SAFE outside of a military installation through a MOU or MOA with a local private or public sector entities, as part of the MOU or MOA, victims shall be asked whether they would like the SARC to be notified, and if yes, the SARC or SAPR VA shall be notified and shall respond.

§ 105.6 Procedures.

See § 105.7 through § 105.16 of this part.

§ 105.7 Oversight of the SAPR Program.

(a) *Director, SAPRO.* The Director, SAPRO, under the authority, direction and control of the USD(P&R) through the Director, DoDHRA, shall serve as the single point of authority, accountability, and oversight for the DoD SAPR program. DoD SAPRO provides recommendations to the USD(P&R) on the issue of DoD sexual assault policy matters on prevention, response, oversight, standards, training, and program requirements. The Director, SAPRO shall:

(1) Assist the USD(P&R) in developing, administering, and monitoring the effectiveness of DoD SAPR policies and programs. Implement and monitor compliance with DoD sexual assault policy on prevention and response.

(2) With the USD(P&R), update the Deputy Secretary of Defense on SAPR policies and programs on a semi-annual schedule.